IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 35 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SHASHNADHIKARI - Applicant(s)
Versus
NARENDRA CHIMANLAL SHAH HUF & 2 - Opponent(s)

==========

Appearance :
MR SI NANAVATI for NANAVATI & NANAVATI for Applicant(s) : 1,
MR PREMAL R JOSHI for Opponent(s) : 1 - 2.
MR DEVAN M DESAI for Opponent(s) : 1 - 2.
None for Opponent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 09/05/2007

ORAL JUDGMENT

1. Shashnadhikari, Municipal School Board, Ahmedabad is before this Court being aggrieved by judgment and decree dated 20.11.2006 passed by the Appellate Bench of the Small Causes Court at

Ahmedabad in Regular Civil Appeal No. 29 of 2006, whereby an eviction decree passed by the learned Single Judge of the Small Causes Court at Ahmedabad in H.R.P. Suit No. 26 of 1999 dated 31.1.2006 stood confirmed.

2. Facts of the case as set out in the revision application are as under:

It was about 50-60 years before the petitioner had taken on rent the suit premises from the respondents to start a primary school in Hindi medium, which is known as 'Pritampura Hindi School No.2'. Monthly rent of the premises was fixed at the rate of Rs.95.62 ps. plus Municipal taxes.

In disastrous earthquake on 26.01.2001, the suit premises were badly damaged and they were categorized in 'G-3' category by CEPT, hence the same were vacated on immediate basis as taking into consideration the damage suffered by the building, it was not advisable to reoccupy the same without carrying out necessary structural repairs.

Respondent Nos. 1 and 2- original plaintiffs filed Civil Suit No. 1132 of 2001 in the Small Causes Court at Ahmedabad, inter alia praying to restrain the petitioner from making any temporary or permanent construction in the suit premises including toilet block. The learned Judge was pleased to grant ex-parte stay as prayed for at the initial stage,

but, later on, after hearing both the parties, by order dated 10.10.2003, the Court partly modified its earlier order and permitted the construction of the toilet block and necessary repair work in the suit premises. After the earthquake, the students were shifted to nearby premises and the premises in question were not occupied.

2. The respondents herein- landlords filed H.R.P. Suit No. 26 of 1999 for possession and permanent injunction, being the owners of the premises bearing Municipal Census Nos. 207, 207/1 to 207/4 and 207/10 to 207/15 situated at Girdharnagar, Ahmedabad. In the premises, Std. 1 to 3 were run by the petitioner School Board. One of the grounds on which the possession was prayed for was that the petitioner-tenant has acquired the suitable accommodation in the vicinity of the premises and the students are already shifted and that in the said premises, the defendant-tenant is able to accommodate the students of Std. 1 to 3 also. Besides, it was contended by the plaintiffs-landlords that the defendants are deliberately stating the exaggerated number of students, which, in fact, are not more than 40, who can conveniently be accommodated in the acquired premises. Besides, the plaintiffs also contended that the defendants have damaged the suit premises; that there is no electricity meter installed; that the suit premises are in dilapidated condition and are about 60 years old; that the premises are required by the plaintiffs for getting them repaired, which

cannot be done without getting vacant possession of the same; that the premises are required for reasonable and bonafide requirement of the plaintiffs as they want to start their business in the suit premises.

The case of the plaintiffs was that the plaintiffs will suffer greater hardship if the decree of eviction is not passed, whereas if decree of eviction is passed, the defendants are not going to suffer any hardship as they have already acquired suitable accommodation and they can always conveniently accommodate children studying in the suit premises prior to the earthquake in 2001. The plaintiffs besides praying for possession of the suit premises prayed for permanent injunction restraining the defendants from using terrace and obstructing the plaintiffs from having access to terrace. The learned Judge of the Small Causes Court No.2, after taking into consideration the rival submissions of both the parties, framed the issue at Exh.28, which are as under:

“1) Whether plaintiff proves that this Court has jurisdiction to entertain this suit against both defendants ?

2) Whether plaintiff proves that suit premises is rented to defendant No.1 at Rs.95.62 exclusive of taxes levies cess etc. as alleged for running a school ?

3) Whether the plaintiff proves that defendant No.1 has acquired suitable accommodation for the school run in the suit premises ?

4) Whether plaintiffs prove that teaching staff of school is illegally and authorisedly carrying on their private business of manufacturing garments from the rented premises. If yes, what is the effect under the provisions of the Bombay Rent Act ?

5) Whether the plaintiff proves that defendants have wasted and damaged the suit premises as alleged ?

6) Whether the plaintiffs proves that they reasonably and bonafidely require suit premises as alleged.

6-A) Whether the plaintiff proves that they reasonably and bonafide requires suit premises for carrying out repairs as alleged ?

7) To whom greater hardship will be caused ?

8) Whether plaintiff proves that defendants are applying lock to the staircase in breach of (illegible) of tenancy as alleged ?

9) Whether the plaintiff are entitled to permanent injunction ?

10) Whether the plaintiffs are entitled to vacant physical possession of the suit premises ?

11) What order and decree ?

The learned Judge answered Issue Nos. 1 and 2 in affirmative, Issue Nos. 3 to 5 in negative, Issue Nos. 6, 6-A in affirmative. Issue No.7 was answered by the learned Judge saying that 'the plaintiff would suffer greater hardship'. Issue Nos. 8 and 9 were answered in negative, Issue No.10 in affirmative and Issue No.11 as per final order. The final order passed by the learned Judge reads as under:

“The plaintiff's suit is decreed as under:-

The defendant shall handover vacant and peaceful possession of the suit premises to the plaintiff within two months from the date of this order.

The plaintiff is entitled to recover mesne profits at the rate of Rs.95.62 ps. p.m. from the date of the suit till possession of the suit premises is handed over to the plaintiff.

The defendant shall bear his own costs and pay costs of this suit to the plaintiff.”

3. The defendants of the original suit filed Civil Appeal No. 29 of 2006 before the Appellate Bench of the Small Causes Court at Ahmedabad. The Appellate Bench, on the basis of the rival contentions of both the parties, framed the following Issues for consideration:

> "1) Whether the learned trial Judge has erred in holding that the plaintiffs are reasonably and bonafide required suit premises ?
>
> 2) Whether learned trial Judge has erred in holding that the plaintiffs are required the suit premises reasonably and bonafide for carrying out repairs ?
>
> 3) Whether learned trial Judge has erred in holding that the plaintiff would suffer greater hardship than the defendants ?
>
> 4) What order and decree ?

The Appellate Bench of the Small Causes Court answered Issue Nos. 1 to 3 in negative. Issue No.4 as per final order. The Appellate Bench was pleased to dismiss the appeal and thereby confirmed the order passed by the learned Judge of the Small Causes Court.

4. In view of the concurrent findings recorded by two courts below, the scope of the revision being manifest, it was put to the petitioner Municipal

School Board to be graceful to vacate the premises and handover peaceful vacant possession to the landlords after having used the premises for more than half century. There being no financial constrains on Ahmedabad School Board for acquiring suitable accommodation and/or land and putting up construction for the purpose. Though, in fact, the school is already shifted from the suit premises since 2001 and it is run at a new premises in the vicinity, which is not disputed and which cannot be disputed, the learned senior counsel conveyed this proposal of the Court to the Chairman, Ahmedabad Municipal School Board by a letter dated 28.04.2007, a copy of which is made available for perusal of this Court, the same is reproduced in toto hereunder:

> "The aforesaid proceedings filed by you in the Gujarat High Court, wherein certain developments have taken place which are required to be brought to your notice. The same are stated hereunder.
>
> The aforesaid Civil Revision Application is filed by the Administrative Officer in the Gujarat High Court challenging the judgment and decree passed by the Small Causes Court at Ahmedabad which was confirmed by the Appellate Court in appeal in favour of the landlord and against the Municipal School Board directing it to handover the vacant and peaceful possession to the landlord. The aforesaid property was

being used by the Municipal School Board for running primary school (Standard 1 to 3) for the benefit of the poor people residing in the vicinity. The suit was filed by the landlord Shri Narendrakumar C. Shah and Pavankumar Agarwal claiming that they bonafidely require the suit premises for their personal use of running their computer business in the suit premises.

In the said suit neither the School Board nor the Ahmedabad Municipal Corporation have bothered to file written statement and the suit was not contested seriously.

Finally the school board approached us to file a Revision Application in the Gujarat High Court under section 29 of Bombay Rent Act. Therefore, under the instructions we filed the above matter in the Gujarat High Court, which came up for admission before Hon'ble Justice R.R. Tripathi. The Hon'ble Court after hearing the counsel appearing for the school board, did not inclined to interfere with the concurrent finding and the order which was passed by both the courts below and had dismissed the above Revision Petition. The counsel appearing for the other side submitted that in the execution proceedings filed by them, wherein the school board has filed frivolous objection and thereby they wanted to delay the proceedings and thereby they did not wish the Plaintiff to enjoy the fruits

of decree, which was passed in their favour. The Hon'ble High Court therefore asked the counsel appearing for the school board to find out as to within what time the Municipal School Board will handover direct vacant and peaceful possession of the suit premises to the plaintiff especially when the School Board has lost in both the courts below and the High Court also was not inclined to interfere with the concurrent orders passed by the lower courts. High Court wanted the Municipal School Board to handover the possession of the suit premises to the plaintiff without any obstruction for which reasonable time can be given by the Court if the School Board is ready and willing to file an undertaking in the High Court stating the period which the School Board requires for handing over the peaceful possession.

In view of the oral directions given by the Hon'ble Court, Mr. Desai, the Administrative Officer of the School Board alongwith other officers of the School Board, met Senior Advocate Mr. S.I. Nanavati today in our office to take his opinion whether the School Board should challenge the order of High Court in the Supreme Court or to handover the peaceful possession to the plaintiff.

Senior Advocate Shri S.I. Nanavati, who appeared in the above matter before the High Court on

24/04/2007 on behalf of the School Board to whom also the Hon'ble High Court has asked the same thing viz. within what time the Municipal School Board will handover the peaceful possession to the landlord. In our opinion (which is confirmed by Senior Advocate Shri S.I. Nanavati) the object of the Municipal School Board for running the above school is noble and the Municipal School Board is discharging duties while imparting primary education to those children free of charges who are coming from the poor families who are residing in the near vicinity of the school and there is no other such school imparting primary education free of charge. **However**, looking into the merits of the case the Municipal School Board having already lost in two courts below and the concurrent finding of the lower courts are now confirmed by the High Court, the chances of winning in the SLP to be filed before the Supreme Court are very remote, especially when the bonafide requirements of the Municipal School Board have not been properly established in the Trial Court.

Under the circumstances, the Hon'ble High Court (Coram: Hon'ble Mr. Justice Ravi Tripathy) is of the firm view that such type of frivolous litigation should be stopped by directing the tenant to handover peaceful and vacant possession of the suit premises to the landlord and if the Municipal School Board is not ready

and willing to do so, the High Court will certainly pass an order that in the event the Hon'ble Supreme Court is dismissing the SLP, all the legal expenses incurred by the Municipal School Board must be compensated personally by such officer who is taking the decision to challenge the order in the higher forum and such compensation will have to be paid by such officer from is salary or personal pocket as well as from the personal pocket of the elected Members of the Board who will be party to such decision.

Senior Advocate Shri S.I. Nanavati, who had appeared in the High Court on 24/04/2007 on behalf of the Municipal School Board had tried to convince the Hon'ble High Court that filing the revision petition in the High Court or SLP in the Supreme Court is the prerogative of the parties to the litigation, which cannot be labeled as frivolous litigation. However, the Hon'ble High Court (Coram: Shri Ravi Tripathi, J.) was of the firm view and requested Shri Nanavati to convey the message of the High Court to each and everyone concern including the Municipal Commissioner of the Ahmedabad Municipal Corporation to intervene in the said matter and to convey us the final decision taken by the concerned officer of the School Board in the meeting which is scheduled to be held on 03/05/2007.

The aforesaid matter is coming up for hearing on 30/04/2007 to inform the Hon'ble Court, what is the final decision taken by the authority even after conveying the view expressed by the Hon'ble High Court.

Since we have been informed that the meeting of the School Board is scheduled to be held on 3rd May, 2007, wherein the School Board will take the decision and will duly inform us the decision taken in the meeting. We will be requesting the Hon'ble Court to adjourn the matter to 4th May, 2007 to enable us to appraise the Hon'ble High Court about the final decision taken by the Municipal School Board.

In our opinion, looking into the facts of the case and the consequences which may arise in the above matter, it will be in the interest of the Municipal School Board to handover the possession of the suit property and should not challenge the order of the Hon'ble High Court by filing SLP in the Supreme Court and should also withdraw the objections which was filed in the execution proceedings. **This opinion is confirmed by Senior Advocate Shri S.I. Nanavati.** According to him also even if the bonafide requirement of School Board is genuine, carrying more weightage, as against the bonafide requirement of the landlord, but nothing is pleaded in the

Trial Court by the Municipal School Board by filing written statement and in such circumstances it is advisable not to contest the litigation any further by filing SLP in the Supreme Court.

During the course of discussion, an apprehension was shown by Mr. Desai, (Administrative Officer of the School Board) as to whether the judgment and order passed by the High Court in the above matter can be used in any other proceedings since many other properties are also be used for similar activity by the Municipal School Board. Senior Advocate Shri S.I. Nanavati told him that in the event that Municipal School is handing over the possession to the landlord, the Hon'be High Court will be requested to make suitable observations in the matter which may not affect the rights of the Municipal School Board in future litigations" (emphasis supplied).

The said letter is taken into consideration by the School Board and the elected body had passed resolution on 3.5.2007, a copy of which is also made available for perusal of the Court, which is taken on record. On translation, it reads as under:

"As per report dated 30.4.2007 of District Education Officer the house of Pritampura Hindi School No.2, which is situated at Juibili Block, Parsini Chawl, Pritampura.

> And house owner Shri Narendra Chimanlal Shah H.U. and Pavankumar Agarwal filed H.R.P. Suit No.26/1999 in Small Cause Court, Ahmedabad. After its judgment Municipal School Board filed Civil Appeal No. 29/2006 in appellate bench of Small Cause Court. Appellate bench dismissed the civil appeal. (Copy of the order is attached herewith) and owner of this house by filing execution application demanded possession of the house.
>
> Against the order of Hon'ble appellate bench filed C.R.A. No.35/2007 in Hon'ble Gujarat High Court and demanded for stay order. On dated 20.4.07 Hon'ble High Court Justice Shri R.R. Tripathy has not admitted the appeal and directed that in how many days possession of the house will be hand over.
>
> Upon perusing opinion of High Court Advocate Nanavati and Nanavati attached herewith, after discussion it is resolved that if C.R.A. is dismissed then permission is granted of school board to file Appeal in the Supreme Court."

5. Taking into consideration, the stand taken by an elected body, for no valid and justifiable reason, overriding an opinion of the senior counsel, speaks volumes about adamance with which the elected body

functions.

6. This Court is of the opinion that this adamance is only because the elected body is not answerable to anybody and besides they have not to bear any expenses, it is only at the public money that they are able to push forward their whims and caprices.

7. The learned senior counsel has, in terms, opined that as, at the relevant time, the school Board and the Ahmedabad Municipal Corporation have not bothered to file written statement and the suit filed by the plaintiffs- respondents herein was not contested seriously, there is no reason for which the matter should be carried to the Hon'ble the Apex Court by filing S.L.P.

The only reason which this Court sees is that this headstrong elected body is not required to spend a pie from its pocket. In view of the concurrent findings recorded by two courts below and in view of the fact that there was no defence pleaded by the petitioner, at the relevant time, this Court finds no substance in this Civil Revision Application and the same is dismissed with cost of Rs.15,000/- (Rupees Fifteen Thousand only).

8. At this juncture, Mr. D.M. Desai, learned advocate for the respondents-landlords, points out that his clients are under a feeling that their ancestor has committed a crime in letting out a

premise for a noble cause of running a school about 50 to 60 years back, judicial notice can be taken of the temperament of the society, which prevailed about 50 to 60 years back when the premises must have been let out not with a view to earn profit. Mr. Desai pointed out the agony of the respondents herein that though it was agreed by the school Board at the relevant time to pay Municipal taxes, the same are not paid by the School Board. As on the date of the deposition of the witness of the School Board- the then Shashnadhikari Shri A.D. Trivedi, i.e. on 13.09.2005, an amount of Rs.**42,692/-** was due and payable towards municipal taxes for which the Corporation goes on issuing notices to the owners of the property.

There cannot be any gross case of mockery of justice than this present case. This is noted with a feeling of shock and surprise on adamance of the elected body, which is supposed to behave more responsibly than an individual and set an example in the society.

9. At this juncture, learned advocate for the petitioners requests that this order be stayed. In view of the facts set out hereinabove and in view of the fact that this Court has not found even a remote case in favour of the petitioner, this request is rejected.

(RAVI R. TRIPATHI, J.)

omkar